IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2937 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHANASMA NAGARIK SAHAKARI BANK LTD - Petitioner(s)

Versus

DEPUTY COLLECTOR & STAMP DUTY OFFICER - Respondent(s)

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Appearance :

MR PRAKASH K JANI for Petitioner(s) : 1,
MR HM PRACHCHHKA ASST GOVERNMENT PLEADER for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/02/2006

ORAL JUDGMENT

1. Rule. Shri H.M.Prachchhak, learned AGP waives service of Rule on behalf of the respondents.

2. With the consent of the learned advocates appearing on behalf of the parties, the matter is taken up for final hearing today.

3. By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Deputy Collector, Stamp Duty Valuation, City Division-II, Ahmedabad dated 9.1.2006 passed under Section 39 of the Bombay Stamp Act by which the petitioner is directed to pay deficit stamp duty of Rs.39,000/- plus Rs.39,000 by way of penalty in all Rs.78,000/- with regard to the document No.3358 executed and presented before the Sub-Registrar, Memnagar dated 24.11.1998.

4. It appears from the record that the petitioner has purchased the property in question by registered sale deed dated 24.11.1998 which was presented before the Sub-Registrar, Memnagar and was registered as Document Registration No.3358. It also appears from the record that the petitioiner

used stamp duty of Rs.6,000/- and as per the audit objection, the petitioner was required to pay and/or use stamp duty of Rs.45,000/- and therefore, notice under Section-39(B) of the Act was served upon the petitioner to show cause as to why the deficit stamp duty of Rs.39,000/- with penalty should not be recovered. It appears from the record that the petitioner submitted its reply dated 13.12.2005. However, the respondents not accepting the same, the impugned order came to be passed by the Deputy Collector, Stamp Duty Valuation, Ahmedabad dated 9.1.2006 by which the petitioner is directed to pay the amount of Rs.78,000/-. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present special civil application under Article 226 of the Constitution of India.

5.Shri P.K.Jani, learned advocate appearing on behalf of the petitioner has submitted that the impugned order dated 9.1.2006 is a non speaking and unreasoned order and the objections submitted by the petitioner are not properly dealt with and

discussed and merely by submitting that the submissions made by the petitioner are not required to be accepted and hence, the impugned order is passed. It is submitted also submitted by Shri Jani, the learned advocate for the petitioner that nothing has been discussed by the authority for what reasons and how the submissions and objections are not required to be accepted. It is therefore, submitted that the impugned order is in breach of principle of natural justice inasmuch as as the same is non speaking and unreasoned order and therefore, it is requested to allow the present special civil application.

6. Shri H.M.Prachchhak, learned AGP has tried to support the order passed by the Deputy Collector, Stamp Duty Valuation, Ahmedabad dated 9.1.2006. However, he is not in position to substantiate that the order is reasoned and as such, justifying as to how and why the objections submitted by the petitioner are not worth accepting and that even what were objections raised by the petitioner, is also not discussed by the Deputy Collector. Under

the circumstances and in view of the fact that the impugned order dated 9.1.2006 is non speaking and unreasoned order and nothing is reflected in the order with regard to the objections submitted by the petitioner and for what reasons the said objections are not accepted, in my opinion, the impugned order is in breach of principle of natural justice and the same requires to be remanded to the Deputy Collector for fresh decision in accordance with law and on merits and to pass speaking and reasoned order.

7. For the reasons stated aforesaid, the petition succeeds. The impugned order dated 9.1.2006 is hereby quashed and set aside and the matter is remanded to the Deputy Collector, Stamp Duty Valuation, Division-II, Ahmedabad for passing an appropriate order and just decision in accordance with law and on merits after giving an opportunity of hearing to the petitioner taking into consideration all submissions and objections made on behalf of the petitioner. Such an exercise is to be done by the respondents within a period of three

months from the date of receipt of this order. The petitioner is directed to cooperate in early disposal of the aforesaid case on remand.

8. Rule is made absolute to the aforesaid, however, there shall be no order as to costs.

[M.R.SHAH, J.]

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